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August 15, 2007

Marlene H. Dortch
 Secretary
 Federal Communications Commission
 445 12th Street, S.W.
 Washington, D.C. 20554

FILED/ACCEPTED**AUG 15 2007**

Federal Communications Commission
 Office of the Secretary

RE: *Ex Parte*, Petition of the Verizon Telephone Companies for Forbearance
 Pursuant to 47 U.S.C. §160(c) in the Boston Metropolitan Statistical Area
(WC Docket No. 06-172)

Dear Ms. Dortch:

I. SUMMARY

On September 6, 2006, Verizon filed a forbearance petition from loop and transport unbundling obligations in six geographic areas, one of which is Boston.¹ The City strongly supports any

¹ Verizon seeks forbearance from applying loop and transport unbundling regulations pursuant to 47 U.S.C. § 251(c) (see 47 C.F.R. § 51.319 (a), (b), (e)); forbearance from the dominant carrier tariffing requirements set forth in Part 61 of the Commission's rules (47 C.F.R. §§ 61.32, 61.33, 61.38, 61.58 and 61.59); forbearance from price cap regulation set forth in Part 61 of the Commission's rules (47 C.F.R. §§ 61.41-61.49); forbearance from the Computer III requirements, including Comparably Efficient Interconnection and Open Network Architecture requirements; and forbearance from dominant carrier requirements arising under section 214 of the Telecommunications Act of 1996 ("Act") and Part 63 of Commission's rules concerning the processes for acquiring lines, discontinuing services, assignments or transfers of control, and acquiring affiliations (47 C.F.R. §§ 63.03, 63.04, 63.60-63.66). See *Petition of the Verizon*

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initiatives that will further competition in the Boston MSA., but must question whether the relief Verizon seeks would be pro-competitive or would it retard budding competition.²

The City of Boston, therefore, submits this letter to add its voice to the many other commenters³ that have written the Commission to express concerns as to the harm granting the requested relief will have on competitors and eventually consumers. Boston further believes the Verizon petition fails to meet its burden that relief is warranted.⁴

Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Boston Metropolitan Statistical Area at 3 n.3 (filed September 6, 2006) ("Petition").

² The City of Boston is proud to claim Verizon as one of its leading corporate citizens. The City is grateful to the role the company has played in being a major employer and partner in making Boston one of the most connected communities in America. Verizon has also been a model for corporate philanthropy. Nothing in this filing should be read as diminishing any of the good work Verizon does in our community. Still, the City is obligated to think of the well being of all its citizens, both corporate and individuals, and therefore is compelled to offer these comments.

³ The City would especially like to highlight the filings of the Cities of Philadelphia and New York on policy matters and reference the Commission's attention to the Reply Comments of The Massachusetts Department of Telecommunications and Cable at 19 (filed April 18, 2007). ("Verizon fails to demonstrate that consumers would not be adversely affected by relieving Verizon of § 251(c) unbundling obligations based on the Omaha Forbearance Order.") It should also be noted that Verizon's petition is opposed by nearly every major consumer advocate, Public Utilities Commission and Attorney General in affected areas, including: City of New York, City of Philadelphia, Connecticut Office of Consumer Counsel, Delaware Public Service Commission, Delaware Division of the Public Advocate, Maryland Office of People's Counsel, Massachusetts Office of Attorney General, National Association of State Utility Consumer Advocates (NASUCA), New Hampshire Office of Consumer Advocate, New Jersey Division of Rate Counsel, New York State Department of Public Service, Pennsylvania Office of Consumer Advocate, Pennsylvania Public Utility Commission, Public Utility Law Project of New York, Virginia Office of Attorney General, and Virginia State Corporation Commission.

⁴ As noted by the City of Philadelphia in its Comments at 2 (filed March 5, 2007):

Verizon bears a heavy burden in proving that it meets the statutory requirements to conditions of obtain forbearance from Section 251(c) of the Act. Under 47 U.S.C. § 160 ("Section 160"), the proponent of a forbearance petition must satisfy three statutory requirements, and the Commission must "deny a petition for forbearance if it finds that any one of the three prongs is unsatisfied." Specifically, Verizon must establish that: 1) enforcement of the regulation is not necessary to ensure that charges, practices, classifications, or regulations are just and reasonable, and are not unjustly or unreasonably discriminatory; 2) enforcement of the regulation or provision is not necessary to protect consumers; and 3) forbearance from applying such provision or regulation is consistent with the public interest. In making such determinations, the

II. INTRODUCTION

The City files these comments in three capacities:

- Boston is a, if not the, major consumer of telecommunications services in the Boston MSA. In 2006 the City of Boston expended \$ \$5.425 million on communications services. Any actions taken by the Commission the jeopardize Boston's ability to obtain the benefits of a competitive market place will result in the city, like other major users, being required to find additional resources to pay a monopoly annuity to Verizon.⁵
- The City of Boston owns, or holds in trust, the majority of the rights- of-way found in the Boston MSA. If competitive providers are denied subloop access and other unbundled services, then the City and its citizens will again be forced to suffer through wholesale street openings and other disruptions as a result of competitive providers needing to replace the infrastructure on which their current business plans are associated.⁶
- Finally, while the Commission and other might question what role the City plays in consumer protection, make no mistake that the residents of Boston look to Mayor and other elected officials of the level of government closest to them for protection in all matters. The City prays that the Commission will consider the impact the requested grant would have on every consumer in Boston.

Commission must also consider, "whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services."

⁵ Of the \$5.425M the City of Boston spent on wireline communications services in 2006, a little more than \$2M was spent on voice services and about \$3M on data lines and services, including T-1, ISDN and ATM networks. This amount does not include the substantial amount spent by the city on wireless services. Despite this market power, the City notes that no customer is big enough to be protected from anti-competitive actions. Boston would reference for the Commission's attention the predicament New York outlined in its March 5, 2007, filing at 3:

Prior to the Verizon/MCI merger, the City had negotiated with MCI a contract for voice and data services. When the merger occurred prior to the negotiated contract becoming final, Verizon repudiated the contract and instead was only willing to offer the City the same services for higher prices and on less favorable terms. With no comparable alternative available, the City had to accept the revised contract.

⁶ Boston also questions at what point does Verizon need to surrender its preferred status under various laws, including but not limited to 47 U.S.C. § 253 if the company continues to refuse to honor the common carrier, interconnected and universal service obligations it once bore that resulted in its preferred status.

III. Petition Fails to Meet Statutory Standards and FCC Precedent⁷

Enforcement of Section 251(c) is necessary for the protection of consumers to prevent Verizon from discriminating against other carriers or leveraging the prices and availability of its own network to exclude competition.

The Circuit Court of Appeals for the District of Columbia clarified that there is a three pronged test under 47 U.S.C. § 160 for relief and that the proponent of a forbearance petition must satisfy each of those three statutory requirements. (*Cellular Telecommunications & Internet Assn. v. FCC*, 330 F.3d 502, 509 (D.C. Cir. 2003). Furthermore, the D.C. Circuit cautioned the Commission must “deny a petition for forbearance if it finds that any one of the three prongs is unsatisfied.” (*Id* at 509)

The City agrees with commenters in this matter that Verizon fails to meet its heavy burden of demonstrating that it has met the three pronged test established by Congress. Verizon has failed to provide the Commission the necessary granular documentation to prove sufficient competition exists to meet FCC precedent,⁸ let alone legislative intent.⁹ The City also agrees with Comcast’s

⁷ Verizon relies almost exclusively on the Commission’s forbearance test set out in *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. §160 (c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 1941 5 (2005) (“*Omaha Order*”).

⁸ See e.g. Comments of National Cable & Telecommunications Association, at 3-4 (filed March 5, 2007) (“Verizon has utterly failed to apply the framework applied by the Commission....”); Comments of Telecommunications Investors, at 22 (filed March 5, 2007) (“Verizon has completely failed to provide any of the necessary evidence to evaluate competitive conditions ... in the Six MSAs using the analytical approach employed by the Commission in the Omaha Proceeding.”). See also: Comments of Broadview Networks, Inc., et. al., at 22 (filed March 5, 2007) (“Verizon has utterly failed to show that these various [alternative providers] represent a sufficient measure of facilities-based competition for the purpose of the Commission’s forbearance analysis”).

Comments of Cox Communications, Inc. (filed March 5, 2007) (“Verizon has provided no useful information that would help the Commission undertake [a granular analysis of competitive facilities deployment on a wire-by-wire-center basis]. Instead, Verizon has provided a hodgepodge of ... competitive data that cannot satisfy the standards the Commission has applied to forbearance petitions”) Comments of the National Association of State Utility Consumer Advocates, et. al., at 37 (filed March 5, 2007) (“Verizon’s Petitions fail on a number of levels to satisfy the statutory requirement necessary to grant forbearance, and do not meet the standards set forth by the Commission when it addressed Qwest’s forbearance request in the Omaha Order”).

⁹ U.S. House Telecom Subcommittee Chairman Ed Markey (D-MA) at an FCC Oversight Hearing held on July 24, 2007 stated:

conclusion that "Verizon's failure to present wire-center level data is, itself, a fully sufficient reason to deny Verizon's petitions."¹⁰

Furthermore, Boston endorses the view of the Massachusetts Department of Telecommunications and Cable ("MDTC") that:

Verizon fails to show that any of its competitors have established a sufficient level of facilities-based competition in any of the wire centers of the Boston MSA, or that they have achieved extensive coverage over a certain number of end user locations accessible from a particular wire center at any of the wire centers within the Boston MSA.¹¹

As mentioned above, the City is a major consumer of communications services, as are the individual city officials that assemble these comments. Our collective view is that competitive local fiber facilities are available, they are hardly ubiquitous. Verizon remains the overwhelmingly dominant local exchange and exchange access provider in our region.

It is clear that unlike the fact pattern that served as the basis for the *Omaha Order*, an order upon which Verizon so desperately relies, there is no region-wide competitor for affordable local telephone service in Boston. This fact alone should serve as the basis for denial of the instant petition. When coupled with Verizon's failure to offer the Commission the granular documentation provided by Qwest in Omaha that competition exists at the wire center level, there can be no doubt that the requested relief be denied.¹²

[L]ooming at the Commission are several forbearance petitions. These petitions seek widespread relief of obligations that incumbent carriers have to discharge for competition policy. The effect of granting these petitions would be to usurp congressionally-enacted statutes in a sweeping manner. I have great concerns about the effect on competition and consumers that these petitions pose and I trust the Commission will weigh the public interest carefully when considering whether to grant or deny these petitions."

See also Comments of the National Association of State Utility Consumer Advocates, et. al., at 37 (filed March 5, 2007) ("Verizon's Petitions fail on a number of levels to satisfy the statutory requirement necessary to grant forbearance....")

¹⁰ Comments of Comcast at 6, n 17 (filed March 5, 2007).

¹¹ Reply Comments of The Massachusetts Department of Telecommunications and Cable at 18-19 (filed April 18, 2007).

¹² If anything the record documents that competition in Boston does not rise to the level found in Omaha. See e.g. Comments of Charter at 4 (filed April 18, 2007) ("[C]ompetition from all competitors (not just cable voice providers) is less than half of the total penetration that the Commission found from just one competitor in Omaha."); Comments of Comcast at 3 (filed March 5, 2007) ("Verizon is clearly exaggerating its case...all CLECs combined - facilities-based and non-facilities-based - hold less than half the share that Cox held in Omaha...Comcast's

IV. E911

Boston is troubled by the concerns raised in the November 16, 2006 filing by the City of Philadelphia with regard to E911 operations. The City of Philadelphia requested:

[T]hat any order issued by the FCC requiring further release of information by Verizon include a bar on any release of any copies of all or a part of the City's Master Street Address Guide ("MSAG") used in connection with E911 services, or the specific names, addresses and telephone numbers of individual customers of telephone companies which derives from information provided for E911 use and to which Verizon has had access solely because of its role as custodian of the E911 database.

Should the Commission find it must act in this matter, Boston prays that the Commission ensure that any actions taken not jeopardize in any way E911 operations in any of the potentially impacted MSAs.

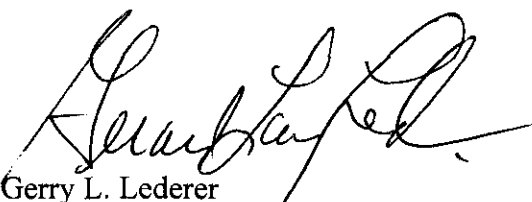
V. Conclusion

Verizon's petition is based on the claim that it faces the same high level of retail competition as that faced by Qwest in Omaha. They claim, therefore, that they should be entitled to the same relief. As major consumers in the marketplace in questions, Boston asserts that no such fact pattern exists. Furthermore, Verizon fails to meet its burden of proof by providing the Commission with the granular documentation at the wire center level that Qwest offered the Commission. The petition must be denied.

Respectfully submitted,

Of Counsel

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penetration, measured in terms of homes passed, is far below the 50%+ market share loss suffered by Qwest in Omaha."

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Mike Lynch
Director Cable & OTC/MIS
City of Boston

cc: Chairman Kevin Martin
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Commissioner Deborah Taylor Tate
Commissioner Robert M. McDowell
Thomas Navin, Chief of the Wireline Competition Bureau
Cathy Seidel, CGB Bureau Chief

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